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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,188	05/14/2001	Raymond Jeffrey May	KCC-14,829	8199

35844 7590 05/16/2005

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EXAMINER
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TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/855,188

Applicant(s)

MAY ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-21 and 50-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21 and 50-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>120103</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed February 22, 2005 have been fully considered but they are not persuasive.

a. Applicants argue that Melbye et al. and Cederblad do not suggest a laminate material with filaments of different compositions bonded to a facing material and the different types of filaments do not overlap one another. Further, Applicants state that Melbye et al. teaches away from the inclusion of two or more types of strands made from different elastomeric polymers because the elastic strands are extruded directly from a single extruder onto the facing material. With regards to the BEITZ et al. reference, it is argued that there is no suggestion to create a sheet-like composite having a barrier layer positioned therein.

It is noted that the Examiner is relying on the Cederblad reference to introduce the concept of using different materials to produce different elasticity properties, and not bodily incorporating the netting structure of Cederblad in Melbye. With regards to Applicant's arguments on the type of extruder Melbye et al. uses to produce the elastic strands, it is noted that the claims of the present invention currently being examined are product claims which do not require the method limitations that Applicant's are arguing.

With regards to arguments over the BEITZ et al. reference, it is noted that the Examiner is not bodily incorporating the composite of Beitz et al. but finds that the one of ordinary skill in the art of disposable garments would be motivated to provide a liquid impermeable barrier layer in a composite material in order to provide protection against liquids. It is noted that Figs. 9-11 of BEITZ et al. provide the barrier layer in a

composite structure similar to the present invention. It is noted that BEITZ et al. relates to a laminate material used in disposable garments and that MELBYE et al. also teaches the use of their elastic composite (laminate) in disposable garments. (Page 7, lines 6-10)

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 13-15, 20-21 and 50-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al. (WO 95/34264) in view of CEDERBLAD et al. (US 5,885,686) and BEITZ et al. (US 6,248,097 B1) as stated in previous action.

MELBYE et al. discloses an elastic material comprising a plurality of extruded continuous elastomeric strands, which are bonded to a facing layer. The strands may be either placed in greater quantity in certain regions and/or thicker and thinner strands may be employed, in order to produce an elastic material having different zones of elasticity [which will equate to the present tension zones]. (See page 4, line 21 – page 5, line 3). The reference further teaches that the first sheet of flexible material [the facing layer], could be a polymeric film, or a sheet of woven natural or polymeric fibers, or nonwoven natural or polymeric fibers that are bonded internally of the sheet, and also teaches that the elastomeric strands could be of thermoplastic material such as elastomeric polyester, polyurethane and polystyrene-polyisoprene-polystyrene. (Refer to page 2, lines 9-18). The reference also teaches the use of a second facing material (32). (Refer to Figure 6)

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MELBYE et al. teaches the use of the elastic sheet-like composite in a disposable garment. (Refer to page 7, lines 6-10)

However, the reference does not expressly disclose that the different zones of elasticity include first filaments of a first elastomeric polymer and the second filaments of a second elastomeric polymer. MELBYE et al. also fails to teach the presently claimed barrier layer.

CEDERBLAD et al. discloses an extruded bicomponent elastomeric netting having bi-directional elasticity. The reference teaches that the elastomeric netting comprises one set of extruded strands in one direction consisting essentially of a first elastic resin component and another set of transverse extruded strands consisting essentially of a second elastic resin component. The strands compositions of both sets of strands could be the same, could be of different components or could be a blend of resins. (Refer to claims 1-8) While the CEDERBLAD et al. reference is directed to provide the material with different elastomeric properties in different directions, it is noted that the reference teachings of using different materials for the first and second strands in order to produce the different elastomeric properties is pertinent to the present invention and will provide the MELBYE et al. reference with an alternate embodiment that would provide the elastic material with different zones of elasticity by using two different elastomeric strands instead of producing this areas by increasing the quantity of strands in certain regions or using thicker and thinner strands.

With regards to claims 5 and 7, CEDERBLAD et al. further teaches the use of polyethylene as a processing aid resin in the polymer compositions. (Refer to claim 11) With regards to claim 14, MELBYE teaches that the zones of different basis weight can be next to each other, therefore, it would have been obvious to one of ordinary skill in the art to have

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likewise place the different elastomeric fibers in zones in which they were side-by-side and not overlapping.

CEDERBLAD et al. also fails to teach the presently claimed barrier layer.

BEITZ et al. discloses a gusset-flap member 19 and teaches that it can include a barrier layer 174 having a pair of laterally opposed, longitudinally extending, barrier layer side edges, and first and second major facing surfaces. The barrier layer can be substantially liquid impermeable. A fabric layer 176 is joined in facing relation with the first facing surface of the barrier layer, and the fabric layer has a leg gusset region and a containment flap region. The reference further teaches a first arrangement of a first plurality of separate, longitudinally extending elastomeric members 139 that can be attached to and sandwiched by the barrier layer 174 and the fabric layer 176. (Col. 6, lines 28-49; also refer to Figures 9-11)

Since the references are from the same field of endeavor, elastomeric filaments, the purpose disclosed by CEDERBLAD et al. and BEITZ et al. would have been recognized in the pertinent art of MELBYE et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with first and second strands of different compositions with the motivation of providing the material with different elastomeric properties as disclosed by CEDERBLAD et al. (Column 1, lines 24-25). Further, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with a barrier layer between the facing layers motivated by the desire of providing the laminate with protection against liquids by providing it with a liquid impermeable layer such as the one of BEITZ et al.

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4. Claims 8-12, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al., CEDERBLAD et al. and BEITZ et al. as applied above, and further in view of MLEZIVA et al. (US 6,057,024) as stated in previous action.

The prior art above differ from the claimed invention because they do not disclose the relation of the elastic tension between the low tension zone and the high tension zone, they do not disclose employing an elastomeric adhesive to bond the facing layer and the filaments, and do not disclose using a spunbond material or a meltblown continuous filament composite web for the facing material.

MLEZIVA et al. teaches a composite elastic material that includes an elastic fibrous web 12 and a first extensible layer 24 and a second extensible layer 28. The extensible layers may be formed by extrusion processes such as, for example, meltblowing processes, spunbonding processes or film extrusion processes. (Column 7, lines 3-44) The reference teaches that the bonding between the extensible layer and the elastic fibrous web 12 can be continuous using adhesive bonding techniques. (Column 9, lines 58-62) Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have adhesively bonded the fibers to the facing layers because MLEZIVA et al. teaches that this was an alternative method to extruding the strand onto the facing and layer and autogeneously bonding the layers and the strands. With regards to the relation of the elastic tension between the low tension zone and the high tension zone claimed on claims 8-12, since CEDERBLAD et al. teaches that it is known to use different elastomeric materials to provide different elastomeric properties in an elastomeric material, these variables are result effective variables. Therefore, it would have been obvious to have optimized the elastomeric material by providing it with first and second strands of specific

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polymeric materials in order to form a fabric having the desired elastic tension through the process of routine experimentation.

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

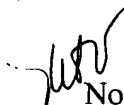
**6.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



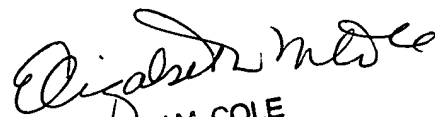
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez  
Examiner  
Art Unit 1771

May 6, 2005



ELIZABETH M. COLE  
PRIMARY EXAMINER